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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,408	08/21/2001	Rick C. Bergman	078260-9006-00	8112
23409	7590	07/02/2004	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			HAQ, NAEEM U	
			ART UNIT	PAPER NUMBER
			3625	
DATE MAILED: 07/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/934,408

Applicant(s)

BERGMAN ET AL.

Examiner

Naeem Haq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Showghi et al. (US 6,473,739 B1).

Referring to claims 1, 3, 17, 18, and 21-23, Showghi teaches a system and method for ordering and selling products at a venue, the system comprising: a first wireless communications device associated with an attendee operable to generate an order including attendee location information, product ordering information, and payment information (Figures 3A-3D; column 2, lines 56-67; column 4, lines 4-65); a second communication device associated with a vendor operable to receive a message concerning the order and communicate a response message indicating acceptance or rejection of the order (column 4, lines 4-23). Showghi does not explicitly teach that the second communication device is a wireless communication device. However, Showghi teaches that much of the communication in his invention is over a wireless network (Figure 1 and 2). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the second communication device into the wireless network of Showghi. One of ordinary skill in the art would have

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been motivated to do so in order to avoid the expense of having to route cables from a plurality of vendor terminals.

Referring to claim 2, Showghi teaches generating a product order on a wireless communications device associated with an attendee, the order including attendee location information, product ordering information, and payment information (column 6, line 27- column 7, line 8); transmitting a message concerning the order to a vendor at the venue; receiving the message on a second wireless communications device associated with the vendor; and generating a response message with the second wireless communications device indicating acceptance or rejection of the order (column 7, lines 17-3).

Referring to claims 4-16, Showghi does not teach that the display board includes a scoreboard, web site, space in a program, television, order card, signup page, account management page, or a system administrator page. However, the Examiner notes that these limitations are not functionally involved in the elements of the recited system. Therefore these limitations are deemed to be nonfunctional descriptive material. The structure of the system would be the same regardless of what information the display board included. The difference between the Applicants' display system and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was

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made to place include any information on the display of Showghi because such information does not functionally relate to the elements of the claimed system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Showghi et al. (US 6,473,739 B1) in view of Official Notice.

Referring to claims 19 and 20, Showghi does not teach printing order information or tracking order fulfillment. However, Official Notice is taken that it is old and well known in the art to print order information and to track order fulfillment. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate these features into the system and method of Showghi. One of ordinary skill in the art would have been motivated to do so in order to create a record of the transaction in the event a dispute occurred at a later time.

Conclusion

If a copy of a provisional application listed on the bottom portion of the accompanying Notice of References Cited (PTO-892) form is not included with this Office action and the PTO-892 has been annotated to indicate that the copy was not readily available, it is because the copy could not be readily obtained when the Office action was mailed. Should applicant desire a copy of such a provisional application, applicant should promptly request the copy from the Office of Public Records (OPR) in accordance with 37 CFR 1.14(a)(1)(iv), paying the required fee under 37 CFR 1.19(b)(1). If a copy is ordered from OPR, the shortened statutory period for reply to

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this Office action will not be reset under MPEP § 710.06 unless applicant can demonstrate a substantial delay by the Office in fulfilling the order for the copy of the provisional application. Where the applicant has been notified on the PTO-892 that a copy of the provisional application is not readily available, the provision of MPEP § 707.05(a) that a copy of the cited reference will be automatically furnished without charge does not apply.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (703)-305-3930. The examiner can normally be reached on M-F 8:00am-5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (703)-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naeem Haq, Patent Examiner
Art Unit 3625

June 28, 2004


Jeffrey A. Smith
Primary Examiner